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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

GROUSE RIVER OUTFITTERS, LTD

,

Plaintiff,

vs.

ORACLE CORP.,

Defendant.

CASE NO. 16-CV-02954 LB

**GROUSE RIVER JURY INSTRUCTION
CONFERENCE SUBMISSION**

To assist the Court and shorten the jury instruction conference tomorrow, Grouse River Outfitters, Ltd. respectfully submits its position on one outstanding issue and clarification of others that are no longer in issue.

1 ***Corporate Knowledge:***

2 The Court's proposed charge on "Corporate Collective Knowledge," Dkt. 299 at 8:10, does
3 not state the law in California. Grouse River is not aware that this charge has ever been given. The
4 charge is taken from language in a decision applying federal securities law and its *sui generis*
5 definition, as determined by the federal courts, of "scienter" under the federal securities laws.

6 No California court has adopted it, and Oracle Corp. has not been able to provide the
7 Court with a California case, or even a federal case applying California law, to support it.

8 As Grouse River's brief on proposed jury instructions has shown, Dkt. 240 at 5, the
9 applicable California law is exactly the opposite. Grouse River proposes and requests that the
10 Court provide the jury with either of the two following instructions.

11 ***Alternative A:***

12 Knowledge that a corporation's employee receives or has in mind when acting in the
13 course of his or her employment is in law the knowledge of the corporation, if such knowledge
14 concerns a matter within the scope of the employee's duties.

15 AUTHORITY: *FMC Corp. v. Plaisted & Companies*, 61 Cal. App. 4th 1132, 1212, 72 Cal.
16 Rptr. 2d 467, 517 (1998), as modified on denial of reh'g (Mar. 27, 1998), and disapproved
17 of on other grounds by *State of California v. Cont'l Ins. Co.*, 55 Cal. 4th 186, 281 P.3d
18 1000 (2012); see also *United States v. Pac. Gas & Elec. Co.*, No. 14-CR-00175-TEH, 2015
19 WL 9460313, at *3 (N.D. Cal. Dec. 23, 2015); Restatement (Third) of Agency § 5.03 (Am.
20 Law Inst. 2006).

21 ***Alternative B:***

22 Knowledge of any NetSuite employee is knowledge of NetSuite. In other words, if a
23 NetSuite employee knew something, then NetSuite is deemed to also have that knowledge.

24 AUTHORITY: *Sanfran Co. v. Rees Blow Pipe Mfg. Co.*, 168 Cal. App. 2d 191, 205, 335
25 P.2d 995, 1004 (1959) ("knowledge by any agent of the corporation, whether presently an
26 officer or not, is the knowledge of the corporation").
27
28

Fraudulent Misrepresentation:

The parties have not reached agreement on the wording or format of the “chart,” so the bracketed language in the Court’s proposed alternative instruction, Dkt. 299 at 9, 10. should be omitted. The first of the two instructions, Dkt. 299 at 9, should be given and not the second, *id.* at 10.

Damages:

In light of the Court’s ruling on Oracle’s motion *in limine* # 10, the “Introduction to Tort Damages – Liability Contested” instruction should be modified to delete the last bullet point – “Grouse River’s lost profits.” Dkt. 299 at 12.

For the same reason, the following instruction – “Lost Profits (Economic Damage)” – should be deleted. Dkt. 299 at 12.

(In view of the Court’s ruling on Oracle’s motion *in limine* # 10, Grouse River assumes that it need not resubmit its previous requested charge on damages to preserve the issue. *See* Dkt. 242 at 101 (Joint Jury Instructions; Grouse River’s Requested Instruction No. F-34); Dkt. 242 at 17 (“Grouse River Instruction F-34 – Damages.”).)

Punitive Damages:

The Court should give its proposed instruction as framed. Dkt. 299 at 13.

Dated: July 11, 2019

Loren Kieve

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By: /s/ Meng Xi

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